Hee Kon Ying v Janlee Development (M) Sdn Bhd (in liquidation)

HIGH COURT (SHAH ALAM) — COMPANY WINDING UP NO MT3-28–151 OF 2006
HASHIM HAMZAH JC
19 DECEMBER 2012

Civil Procedure — Striking out — Winding up — Notice of motion filed for leave to institute action against liquidators under winding up order — Application to strike out motion — Whether application had raised any serious questions to be tried — Whether plain and obvious case to be struck out summarily — Rules of the High Court 1980 O 18 r 19(1)

Companies and Corporations — Winding up — Liquidator — Sale of properties allegedly undervalued — Act of liquidators in exercising their duties — Whether liquidators had acted reasonably — Whether applicant had raised evidence to support allegations against liquidators — Whether court should interfere

Janlee Development (M) Sdn Bhd ('the company') had entered into a sale and purchase agreement ('the SPA') with Chun and Lim Construction Sdn Bhd ('the applicant') whereby it had agreed to sell and transfer its interest in 24 pieces of leasehold properties situated in Sepang ('the properties') to the applicant for a consideration of RM2 million. The applicant claimed that although it had paid the purchase price in full, the company had failed to transfer the properties to the applicant. On 14 November 2006 the appellant initiated a legal action to compel the company to transfer the properties. On 28 November 2006, the company was wound up by an order of court. The liquidators of the company claimed to have no knowledge or record of the company entering into the SPA with the applicant. Subsequently the liquidators applied to disclaim the SPA. The High Court decided that the liquidators had duly exercised their powers in disclaiming the SPA and thus ordered the applicant to remove the private caveat it had entered on the properties. The applicant filed an appeal against the decision but later withdrew its appeal. Thereafter, the applicant filed a proof of debt claiming the sum of RM1,981,723 from the liquidators of the company. The applicant alleged that it had secured a purchaser who was willing to pay RM3.5m for the purchase of the properties but that the liquidators had sold the properties for a lesser value. The applicant thus resorted to file the present application pursuant to s 279 of the Companies Act 1965 ('the Act') for, inter alia, leave to commence proceedings against the liquidators, for the sale of the properties to be set aside and for the properties to be sold to the purchaser who was willing

to pay RM3.5m for the properties. The applicant as one of the creditors of the company submitted that the liquidators had not acted in the best interest of the creditors. In fact, the applicant claimed that the liquidators had acted negligently and recklessly in deciding to sell the properties for approximately RM1.7m without a proper tender exercise. The applicant further submitted that as there were serious questions to be tried the application ought not to be dismissed summarily. The liquidators submitted that the applicant's application was misconceived in that it was not for the applicant to question or challenge the tender process after the sale of the properties had been concluded by the liquidators. The liquidators thus applied to strike out the applicant's application pursuant to O 18 r 19(1)(a), (b), (c) and/or (d) of the Rules of the High Court 1980 ('RHC') on the grounds that the applicant's application was bad in law, irrelevant, scandalous, frivolous and vexatious or otherwise an abuse of the process of the court.

Held, striking out the applicant's application with costs:

(1) It was evident that the liquidators had exercised reasonable steps in searching for the best price for the properties before accepting the offer by one offeror and executing the agreement for the sale of the properties to that offeror. In fact, it was for the applicant to prove that the liquidators had acted unreasonably or that they were acting in a manner that no reasonable liquidator would act. However, there was no prima facie evidence raised by the applicant to support the allegations made against the liquidators. As such, there was no need to interfere with the decision of the liquidators (see paras 25–26).

(2) The motion instituted by the applicant against the liquidators failed to disclose any grounds, justifications or breach of any specific provisions of law on the part of the liquidators. The application, which merely contained allegations against the liquidators, was intended to interfere with the powers conferred to the liquidators in selling the properties belonging to the company without any reasonable ground or cause. As the application did not raise any serious questions to be tried, the claim was obviously unsustainable and this was a plain and obvious case to be struck out summarily under O 18 r 19(1) of the RHC (see para 32).

[Bahasa Malaysia summary

Janlee Development (M) Sdn Bhd ('syarikat') memasuki satu perjanjian jual beli ('PJB') dengan Chun and Lim Construction Sdn Bhd ('pemohon') di mana ia bersetuju untuk menjual dan memindah milik kepentingannya dalam 24 bidang hartanah pegangan pajak yang terletak di Sepang ('hartanah tersebut') kepada pemohon bagi balasan sebanyak RM2 juta. Pemohon menyatakan bahawa walaupun ia telah membayar harga belian dengan penuh, syarikat telah gagal memindah milik hartanah tersebut kepada pemohon. Pada 14 November 2006, perayu memulakan tindakan undang-undang untuk

memaksa syarikat tersebut memindah milik hartanah tersebut. Pada 28 November 2008, syarikat tersebut telah digulungkan melalui perintah mahkamah. Pelikuidasi-pelikuidasi syarikat menyatakan bahawa mereka tiada pengetahuan atau rekod mengenai syarikat tersebut memasuki PJB dengan pemohon. Kemudian pelikuidasi-pelikuidasi memohon untuk menafikan PJB tersebut. Mahkamah Tinggi memutuskan bahawa pelikuidasi-pelikuidasi telah dengan betul melaksanakan kuasa mereka dalam menafikan PJB tersebut dan dengan itu memerintahkan pemohon membatalkan kaveat persendirian yang telah dimasukkan terhadap hartanah tersebut. Pemohon memfailkan rayuan terhadap keputusan tersebut tetapi kemudian menarik balik rayuannya. Selepas itu, pemohon memfailkan bukti hutang menuntut sejumlah RM1,981,723 daripada pelikuidasi-pelikuidasi syarikat. Pemohon mendakwa bahawa ia telah mendapatkan seorang pembeli yang bersetuju untuk membayar RM3.5 juta bagi pembelian hartanah tersebut tetapi bahawa pelikuidasi-pelikuidasi telah menjual hartanah tersebut dengan nilai yang lebih rendah. Pemohon oleh itu memfailkan permohonan ini berikutan s 279 Akta Syarikat 1965 ('Akta') untuk, antara lain, kebenaran untuk memulakan prosiding terhadap pelikuidasi-pelikuidasi, bagi jualan hartanah tersebut diketepikan dan untuk hartanah tersebut dijual kepada pembeli yang bersetuju membayar RM3.5 juta bagi hartanah tersebut. Pemohon sebagai salah seorang pemiutang syarikat menghujah bahawa pelikuidasi-pelikuidasi tidak bertindak dalam kepentingan yang paling baik pemiutang-pemiutang. Pada asasnya, pemohon memohon bahawa pelikuidasi-pelikuidasi telah bertindak secara cuai dan semberono dalam menentukan untuk menjual hartanah tersebut pada harga RM1.7 juta tanpa pelaksanaan tender yang sewajarnya. Pemohon selanjutnya menghujah bahawa oleh sebab terdapat persoalan serius yang perlu dibicarakan permohonan tersebut tidak boleh ditolak secara terus. Pelikuidasi-pelikuidasi menghujah bahawa permohonan pemohon adalah salah tanggap di mana pemohon tidak berhak untuk mempersoalkan atau mencabar proses tender selepas jualan hartanah tersebut telah dimuktamadkan oleh pelikuidasi-pelikuidasi. Pelikuidasi-pelikuidasi oleh itu memohon untuk membatalkan permohonan pemohon berikutan A 18 k 19 (1)(a), (b), (c) dan/atau (d) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') atas alasan-alasan bahawa permohonan pemohon adalah salah di sisi undang-undang, tidak relevan, mengaibkan, remeh dan menyusahkan atau sebaliknya adalah penyalahgunaan proses mahkamah.

Diputuskan, membatalkan permohonan pemohon dengan kos:

(1) Adalah jelas bahawa pelikuidasi-pelikuidasi telah melaksanakan langkah-langkah yang munasabah dalam mencari harga yang paling baik bagi hartanah tersebut sebelum menerima tawaran oleh seorang penawar dan melaksanakan perjanjian bagi jualan hartanah tersebut kepada penawar tersebut. Sebenarnya, pemohon perlu membuktikan bahawa pelikuidasi-pelikuidasi tersebut telah bertindak secara tidak munasabah

atau bahawa mereka bertindak dalam cara di mana tidak ada pelikuidasi yang munasabah akan bertindak. Walau bagaimanapun, tidak ada keterangan prima facie yang dibangkitkan oleh perayu untuk menyokong dakwaan yang dibuat terhadap pelikuidasi-pelikuidasi. Oleh demikian, tidak ada keperluan untuk campur tangan dengan keputusan pelikuidasi-pelikuidasi (lihat perenggan 25–26).

(2) Usul yang dimulakan oleh perayu terhadap pelikuidasi gagal mendedahkan apa-apa alasan, justifikasi atau pelanggaran apa-apa peruntukan spesifik undang-undang oleh pelikuidasi-pelikuidasi. Permohonan tersebut, yang semata-mata mengandungi dakwaan terhadap pelikuidasi-pelikuidasi, adalah diniatkan untuk campur tangan dengan kuasa yang diberikan kepada pelikuidasi-pelikuidasi dalam menjual hartanah yang dimiliki oleh syarikat tersebut tanpa apa-apa alasan atau sebab munasabah. Oleh sebab permohonan tersebut tidak membangkitkan apa-apa persoalan serius untuk dibicarakan, permohonan tersebut jelas tidak boleh dikekalkan dan ini adalah kes yang jelas untuk dibatalkan secara terus di bawah A 18 K 19(1) KMT (lihat perenggan 32).]

Notes

For a case on winding up, see 2(4) *Mallal's Digest* (4th Ed, 2012 Reissue) para 8158.

For cases on liquidators, see 3(10) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 1368–1420.

Cases referred to

Abdul Rahim bin Abdul Hamid & Ors v Perdana Merchant Bankers Bhd & Ors [2000] 2 MLJ 417; [2000] 2 AMR 1319, CA (refd)

Abric Project Management Sdn Bhd v Palmshine Plaza Sdn Bhd & Anor [2007] 5 MLJ 685; [2007] 4 AMR 445, HC (refd)

Bandar Builder Sdn Bhd & 2 Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36; [1993] 2 AMR 1969, SC (refd)

Chi Liung Holdings Sdn Bhd v Ng Pyak Yeow [1995] 3 MLJ 204; [1995] 3 AMR 2630, CA (refd)

Chin Cheen Foh v Ong Tee Chew [2003] 3 MLJ 57, HC (refd)

Harapan Permai Sdn Bhd v Sabah Forest Industries Sdn Bhd [2011] 2 MLJ 192, CA (refd)

Leon v York-O-Matic Ltd [1966] 3 All ER 277, Ch D (refd)

Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor [1996] 1 MLJ 113; [1996] 2 AMR 2477, FC (refd)

TN Metal Industries Sdn Bhd & Ors v Ng Pyak Yeow [1996] 4 MLJ 567, HC (refd)

Legislation referred to

Companies Act 1965 ss 279, 296(1)
Companies (Winding-up) Rules 1972 r 63
Rules of the High Court 1980 O 18 r 19(1)(a), (b), (c), (d)

Shankar Gunaratnam (Rose Hussin) for the applicant.
Jananee Gopal (Chellam Wong) for the liquidators of Janlee Development (M) Sdn Bhd.

Hashim Hamzah JC:

BACKGROUND FACTS

[1] Janlee Development (M) Sdn Bhd ('Janlee'), is at material times the registered owner of 24 pieces of leasehold lands all in the Mukim of Dengkiland the District of Sepang ('the said properties') held under:

(a) HS(M) 12763 PT 723
(b) HS(M) 12764 PT 724
(c) HS(M) 12765 PT 725
(d) HS(M) 12766 PT 726
(e) HS(M) 12767 PT 727
(f) HS(M) 12768 PT 728
(g) HS(M) 12769 PT 729
(h) HS(M) 12770 PT 730
(i) HS(M) 12771 PT 731
(j) HS(M) 12772 PT 732
(k) HS(M) 12773 PT 733
(l) HS(M) 12774 PT 734
(m) HS(M) 12775 PT 735
(n) HS(M) 12776 PT 736
(o) HS(M) 12777 PT 737
(p) HS(M) 12778 PT 738
(q) HS(M) 12779 PT 739
(r) HS(M) 12780 PT 740
(s) HS(M) 12781 PT 741

(t) HS(M) 12782 PT 742

(u) HS(M) 12783 PT 743

(v) HS(M) 12784 PT 744

[2] On 16 June 2004, Janlee entered into a sales and purchase agreement ('the said sales and purchase agreement') with Chum & Lim Construction Sdn Bhd ('the applicant') where it was agreed that Janlee will sell and transfer its rights, title and interest in the said properties for a consideration of RM2,000,000 as the purchase price (exh LKL1).

[3] The applicant claimed that on 29 May 2004, payment in the sum of RM500,000 has been paid to Janlee as the deposit and also as an advance to the said purchase price. The balance of RM1,500,000 and a further sum of RM31,723.83 being the sum for late payment was claimed to be paid on 1 May 2005 by the applicant.

[4] The applicant claimed that the purchase price has been paid in full but Janlee failed to take any necessary steps to transfer the said land in accordance with the said sales and purchase agreement.

[5] On 14 November 2006, the applicant had initiated a legal action by way of originating summons against Janlee to compel the transfer of the said properties in the High Court of Malaya at Shah Alam (exh LKL2).

[6] On 28 November 2006, Janlee was wound up by the High Court vide Shah Alam High Court Winding Up Petition No MT3-28–151 of 2006.The court further ordered for the appointment of private liquidators for Janlee. As a result Mr Michael Joseph Monteiro and Mr Heng Ji Keng ('the liquidators', named as respondents in this application) were appointed as the liquidators of Janlee (exhs LKL3 and MJM1).

[7] Mr Michael Joseph Monteiro in his affidavit in support at para 5.2 averred that the liquidators, in exercising their duties to take over all documents and records of the company to determine and update its status, have no knowledge and/or possession of any books or record of the company regarding the said sales and purchase agreement in which the applicant had relied upon in entering a private caveat against all the said properties.

[8] Subsequently, the liquidators had exercised their powers in pursuance to s 296(1) of the Companies Act 1965 to disclaim the purported sales and purchase agreement through an originating summons dated 30 June 2009 filed in the High Court (exh MJM2a).

[9] On 5 August 2010, the High Court allowed the originating summons filed by the liquidators and dismissed the applicant's originating summons with costs. The court decided, inter alia, that the liquidators had duly exercised their powers in disclaiming the said sales and purchase agreement and that the private caveat entered by the applicant on the said properties is to be removed (exh MJM3).

[10] On 18 August 2010, the applicant filed two notices of appeal to the Court of Appeal against the decision of the High Court in allowing the liquidators claim and dismissing its own claim, respectively. Both were struck off by the Court of Appeal on 2 March 2011. The applicant appealed against the decision but later withdrew the application vide notice of discontinuance dated 3 November 2011 (exhs MJM4, MJM5 and MJM7a).

[11] On 20 September 2011, the solicitors for the applicant sent a letter with the proof of debt attached to it, to the solicitors for the liquidators of Janlee. The amount claimed in the proof of debt amounted to RM1,981,723 (exh LKL5).

[12] On 18 October 2011, the applicant received a letter from a Messrs Elders Properties stating that a purchaser for the said properties, namely Hasrat Integrasi (M) Sdn Bhd, has been secured and that the purchase price will be RM3,5000,000 (exh LKL5A).

[13] The applicant claimed that they had given notice to the liquidators of the said offer but were notified by the liquidators' agents and/or representatives that the said properties were sold for a lesser value which is RM1,900,000.

[14] On 28 November 2011, the applicant through their solicitors wrote to the liquidators enquiring on the status of the said properties and to inform them of the said offer. The liquidators replied by stating that the matter will be addressed by their appointed solicitors (exhs LKL6 and LKL7).

[15] The applicant claimed that they had not received any further information regarding the matter. Thus they resorted to file the application vide a notice of motion dated 20 January 2012 ('encl 1') in the High Court of Malaya at Shah Alam for the following relief:

(a) that the applicant be given leave to commence proceedings against the respondents, Mr Michael Joseph Monteiro and Mr Heng Ji Keng as the liquidators of Janlee;

(b) that the respondents shall provide an account of receipts, payments and a statement of the position in the prescribed form verified by statutory declaration within seven days from the date the order is made;

(c) that the sale of the said properties be set aside;

(d) that the said properties instead be sold to Hasrat Integrasi (M) Sdn Bhd for the purchase price of not less than RM3,500,000; and

(e) that in the event the sale is successful, 2% out of the proceeds of the sale to be paid to Messrs Elders Properties as commission.

[16] The liquidators then applied to the High Court vide a summons in chambers dated 23 April 2012 (encl 3) to strike out encl 1 in pursuant to O 18 r 19(1)(a), (b), (c) and/or (d) of the Rules of the High Court 1980 ('RHC 1980').

THE APPLICANT'S CASE

[17] It was submitted by learned counsel for the applicant that the remedies sought for were in pursuant to s 279 of the Companies Act 1965 which provides that 'any person aggrieved by any act or decision of the liquidator may apply to the Court which may confirm, reverse or modify the act or decision complained of and make such order as it thinks fit'.

[18] The crux of the applicant's submission is summarised as follows:

(a) that the applicant is one of the creditors of Janlee since the liquidators had accepted and admitted the proof of debt;

(b) that the act of the liquidators in selling the said properties for approximately RM1,700,000 was done without a proper tender exercise, was far undervalued, was done negligently and recklessly and was not done for the best interest of the creditors;

(c) that there was no notice given with regard to the liquidators' intention to sell the properties and the sale of the said properties itself;

(d) that the liquidators failed to notify the applicant that an account has been made up or failed to furnish a statement of the position of Janlee to the applicant. It was claimed that this is a breach of the statutory duties of the liquidators under the provisions of the Companies Act without being specific which provisions had been breached; and

(e) that there are serious questions to be tried and that the notice of motion ought not to be dismissed summarily.

THE LIQUIDATORS' CASE

[19] The issues in the liquidators' submission are summarised as follows:

(a) that a leave from the court is required before the applicant can commence

any proceedings against the liquidators of a company and prima facie evidence must be shown in support of any allegations made against the liquidators before a leave is granted;

(b) that it is not evident what action is to be commenced against the liquidators and what justification the applicant possesses to have initiated the present motion;

(c) that the applicant has failed to address the exact provisions of law that entitles them to file the motion against the liquidators and as such, the motion is misconceived, confusing, embarrassing, and at the very least bad in law;

(d) that the prayers contained in the motion should not be dealt with in these proceedings as there are no longer any 'live issues' upon the winding up of the company;

(e) that the applicant is attempting to obtain a final remedy by virtue of the motion despite the applicant's right over the said lands have been determined and dealt with extensively previously by the court;

(f) that it is not for the applicant to question or challenge the tender process after the sale has been concluded by the liquidators; and

(g) that encl 1 is bad in law, irrelevant, scandalous, frivolous and vexatious or otherwise an abuse of the process of the court and one which is definitely a plain and obvious case to be struck out.

THE LEAVE OF THE COURT

[20] Firstly, with regard to the issue of leave raised by the liquidators, the Court of Appeal in the case of *Chi Liung Holdings Sdn Bhd v Ng Pyak Yeow* [1995] 3 MLJ 204 at p 207; [1995] 3 AMR 2630 at p 2635 held that:

> … it is clear that a liquidator having been appointed by the court, is an officer of the court. It goes without saying leave of court is needed before an action is commenced against him and officers like him. It is a well-established principle of law that a leave is required before any action can be commenced against liquidators of a company.

[21] It is a well-established principle of law that a liquidator of a company who is appointed by the court is an officer of the court. This can be seen under r 63 of the Companies (Winding-up) Rules 1972. Prior leave of the court is required before any action can be instituted against the liquidators. This is to protect the liquidators from any wrongful interference in the liquidation

process (see also *Abric Project Management Sdn Bhd v Palmshine Plaza Sdn Bhd & Anor* [2007] 5 MLJ 685; [2007] 4 AMR 445 and *Chin Cheen Foh v Ong Tee Chew* [2003] 3 MLJ 57).

[22] It is settled law that in deciding whether or not to grant leave for the applicant to institute the action against the liquidators, the court must give proper consideration on whether there is sufficient prima facie evidence to support any allegation made against the liquidator (see *Abric Project Management Sdn Bhd v Palmshine Plaza Sdn Bhd & Anor* and *TN Metal Industries Sdn Bhd & Ors v Ng Pyak Yeow* [1996] 4 MLJ 567).

[23] In the present case, the applicant alleged that the liquidators had acted negligently, recklessly and failed to properly exercise their duties in deciding to sell the said properties. The applicant alleged that that the liquidators had failed to execute a reasonable tender exercise and that the liquidators had sold the said properties for a purchase price which was undervalued while disregarding the offer that the applicant had obtained in selling off the said properties for a purchase price of more than RM3,500,000. There was no dispute on whether the said properties had been sold prior or after the notification was made to the liquidators.

[24] The liquidators had taken these steps in selling the said properties (exhs MLM8 to MLM11), namely:

(a) the liquidators had appointed one, Macreal International as a valuer to conduct the valuation of the lands;

(b) the company commenced the expression of interest ('EOI') exercise with the advertisements made in 'The Sun' and 'Nanyang Siang Pau' newspapers respectively on 2 June 2011 together with the information memorandum dated 31 May 2011;

(c) upon the end of the EOI exercise on 4 July 2011, the liquidators received three offers; and

(d) the liquidators accepted the offer by one, Wemal Construction Sdn Bhd on 26 July 2011 and a sale and purchase agreement was executed.

[25] The main point to consider here is whether the liquidators had acted reasonably in selling the said properties. It is evident before me that the liquidators under these circumstances had exercised reasonable steps in searching for the best price of the said properties and in selling them. In fact, it is for the applicant to satisfy this court through credible and concrete evidence that the liquidators had acted unreasonably or that the liquidators were acting in a manner that no reasonable liquidator would act. The court will not

interfere if the applicant who alleged as such fails to do so (see *Leon v York-O-Matic Ltd* [1966] 3 All ER 277 and *Abric Project Management Sdn Bhd v Palmshine Plaza Sdn Bhd & Anor*.

[26] In short, I find that there was no prima facie evidence to support the allegations made against the liquidators. As such, the court refuses to interfere with the decision of the liquidators.

STRIKING OUT

[27] Order 18 r 19(1)(a)–(d) of the RHC 1980 provides that:

> (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that:-
>
> (a) it discloses no reasonable cause of action or defence as the case may be;
>
> (b) it is scandalous, frivolous or vexatious;
>
> (c) it may prejudice, embarrass or delay the fair trial of the action;
>
> (d) it is otherwise an abuse of the process of the Court, and may order for the action to be stayed or dismissed or judgment to be entered accordingly as the case may be.

[28] With regard to the principles underlying the applicability of the said provision, Mohd Dzaiddin Abdullah SCJ (as he then was) in delivering the judgment of the Supreme Court in the case of *Bandar Builder Sdn Bhd & 2 Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36 at pp 43–44; [1993] 2 AMR 1969 at p 1975–1976, held that:

> The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) of the RHC are well settled. It is only in *plain and obvious cases* that recourse should be had to the summary process under this Rule (per Lindley MR in *Hubbuck v Wilkinson*) [1899] 1 QB 86, p 91, and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable' (*AG of Duchy of Lancaster v L & NW Ry Co* [1892] 3 Ch 274 (CA)). It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence (*Wenlock v Moloney* [1965] 1 WLR 1238; [1965] 2 All ER 871 (CA). The authorities further show that if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under O 33 r 3 (which is in pari materia with our O 33 r 2 of the RHC) (*Hubbuck v Wilkinson*). The court must be satisfied that there is no reasonable cause of action or that the *claims are frivolous or vexatious* or that the defences raised are not arguable … But what we have to consider is whether the counterclaim discloses some cause of action and, likewise, whether the defence to

counterclaim raises a reasonable defence. It has been said that so long as the pleadings disclose some cause of action or raise some question fit to be decided by the judge, the mere fact that the case is weak and not likely to succeed at the trial is no around for the pleadings to be struck out (*Moore v Lawson* (1915) 31 TLR 418 (CA); *Wenlock v Moloney*.

[29] The abovementioned principles are also affirmed in the Federal Court case of *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor* [1996] 1 MLJ 113 at p 136; [1996] 2 AMR 2477 at p 2509.

[30] Furthermore, in the Court of Appeal case of *Abdul Rahim bin Abdul Hamid & Ors v Perdana Merchant Bankers Bhd & Ors* [2000] 2 MLJ 417 at p 423–424; [2000] 2 AMR 1319 at p 1328 which affirmed both of the cases abovementioned, Mokhtar Sidin JCA (as he then was) held that:

In considering an application under *O 18 r 19(1)(a)*, the court has to take into account the statement of claim on the face of it and no consideration whatsoever shall be paid to the evidence in the form of these affidavits. So long as the statement of claim discloses a reasonable cause of action, however weak the claim is, the claim cannot be struck off summarily. At that stage of the proceedings it is not for us or for the learned judge of the High Court to consider the merits of Carah's claim. On an application under O 18 r 19(1)(a) the court has only to consider whether the statement of claim discloses a reasonable cause of action. The well-established principle is that the court will not summarily strike out pleadings, except only in plain and obvious cases where the claim or counterclaim is plainly and obviously not sustainable.

[31] However, the court is entitled to examine affidavit evidence for a claim under grounds (b) and/or (d) under O 18 r 19(1) of the RHC 1980 (see *Harapan Permai Sdn Bhd v Sabah Forest Industries Sdn Bhd* [2011] 2 MLJ 192 at p 200).

[32] In the present case, I agree with the contention of learned counsel for the liquidators that the motion instituted by the applicant failed to disclose any grounds, justifications or even any breach of any specific provisions of law on the part of the liquidators. It contains mere allegations against the liquidators. The claim itself discloses no reasonable cause of action and that the claims are frivolous or vexatious or otherwise an abuse of the process of the court. Furthermore, it seems to me that this application was intended to interfere with the powers conferred to the liquidators in selling the said properties belonging to Janlee without any reasonable ground or cause. There is no serious question to be tried. As such, I believe that the claim in encl X1 is obviously unsustainable. I find that this is a plain and obvious case to be struck out summarily under O 18 r 19(1) of the RHC 1980.

[33] Based on all of the above, encl X3 is allowed. Enclosure X1 is hereby struck out under O 18 r 19(1) of the RHC with costs.

Applicant's application struck out with costs.

Reported by Kohila Nesan